

1 Stephen C. Ruehmann (167533)
2 **LAW OFFICES OF STEPHEN C. RUEHMANN**
3 770 L Street, Suite 950
4 Sacramento, CA 95814
5 Tel (916) 449-3939/Fax (916) 449-3929
6 ruehmannlaw@yahoo.com

7 Marc A. Fisher, Esq. (47794)
8 **LAW OFFICES OF MARC A. FISHER**
9 9580 Oak Avenue Parkway, #15
10 Folsom, CA 95630
11 Tel (916) 988-8001/Fax (916) 988-8002
12 mfisher@cosentinolaw.com

13 Attorneys for Plaintiffss
14 ANILECH SHARMA and
15 PARMA SHARMA

E-filing

16 **FILED**
17 **DEC 21 2009**
18 **RICHARD W. WIEKING**
19 **CLERK, U.S. DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 *[Signature]*

22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 C (ANILECH SHARMA and PARMA SHARMA,) Case No.: **C09-05968** VRW
25 Plaintiffss,) DECLARATION OF PLAINTIFF ANILECH SHARMA IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE PENDING PRELIMINARY INJUNCTION
vs.)
26 PROVIDENT FUNDING ASSOCIATES, L.P.; a California limited partnership;) DATE: December 21, 2009 ADR
27 PREFERRED MORTGAGE, a California business entity, form unknown;) TIME: TBA
28 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; a California corporation; MAX DEFAULT SERVICES CORPORATION, a California corporation; and DOES 1-100, inclusive,) DEPT: TBA
Defendants.) JUDGE: TBA

1 Stephen C. Ruehmann, ESQ.(167533)
2 **LAW OFFICES OF STEPHEN C. RUEHMANN**
3 770 1. Street, Suite 950
Sacramento, CA 95814
(916)449-3939

4 MARC C. FISHER, ESQ. (44794)
5 **LAW OFFICES OF MARC C. FISHER**
6 9580 Oak Avenue Parkway, Suite 15
Folsom, CA 95630
(916) 988-8001

7 Attorneys for Plaintiff

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF ALAMEDA, Ca. – UNLIMITED JURISDICTION**

11 .) Case No.:
12 Anilech Sharma)
13 vs.) **DECLARATION OF ANILCH SHARMA**
14 Provident Funding, et al., Defendants.) **IN SUPPORT OF EX PARTE**
15) **APPLICATION FOR A RESTRAINING**
16) **ORDER AND INJUNCTION**
17)
18)
19)
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25)

I, Anilech Sharma, declare:

1. That I am the plaintiff in the above-referenced matter and

18 I have personal knowledge of the facts contained in this declaration and I am willing and
19 competent to testify to their truth if called as a witness.

20 2. That I the owner of the real property located at 22169 Betlen Way, Castro Valley, CA.
21 94546 which is a single family residence where I reside with my family and my wife Parma D.
22 Sharma.

23 3. That we have owned this property as since October 2006. We have spent capital
24 investment and sweat equity in improving and maintaining the property.

25 4. That my current lender on my home is Provident Funding .

1 5. Provident Funding provided me with a mortgage 1st loan for approx \$470,800.00 and a 2nd
2 loan for approx \$117,700.00 of which the principle balance of the 1st loan is over \$495,000.00
3 We were solicited by Preferred Mortgage located in San Ramon Ca. an agent of Provident
4 Funding, to purchase our home with a very low interest rate. The loan agent Marques Buck of
5 Preferred Mortgage advised me that this was a special loan program and that they would fill out
6 the loan application with our income of over \$10,500 per month which was far more than our
7 real incomes as a supervisor at Little Ceasar Enterprises and my wife as a nursing assistant.. The
8 Preferred Mortgage representative Marques Buck, agent of Provident Funding said this was
9 necessary to "just state whatever on the application for income and assets, that would not be
10 verified to make the loans go through." I never met with or talked to a Provident Funding direct
11 representative or underwriter about the loan, only to the Preferred Mortgage agent.. When I
12 signed the loan papers know one ever explained the terms of the loans or how the loan was
13 repaid. We were tolod that we would be able to refinance later to a better loan. I was just told to
14 sign the loan documents by Marques Buck the Preferred Mortgage, Provident Funding loan
15 representative and the loan would go through. Even though we had concerns about the terms of
16 the loan, we were told by Marques Buck of Preferred Mortgage the agent of Provident Funding,
17 that if we did not sign the loan documents we would forfeit our deposit and be responsible for all
18 the originations fees including the yield spread premium that Preferred Mortgage was receiving
19 from Provident Funding that was over \$6,000.00

20 6. At some point on or about January 2009, we began to experience some financial problems.
21 7. At no time since January of 2009 has Provident Funding or any of its acts, employees, servants
22 or any persons acting on their behalf including the trustee and beneficiaries contacted me prior to
23 filing a Notice of Default to discuss a loan modification with a lower monthly payment or
24 interest rate or alternative to foreclosure. The only calls I ever received were collection calls and
25 threats of foreclosure from Provident Funding.

1 8. I did not receive any mail, telephones calls or any other correspondence from, Provident
2 Funding loan representative its agents, servants, employees or anyone acting on its behalf
3 offering me a loan modification with a lower monthly payment than we currently had or
4 alternative prior to the filing a Notice of Default on the subject property in August of 2009.
5 I called Provident Funding in March 2009 in response to the constant collection calls, noting that
6 we were having financial problems. Repeated calls to the collections people at Provident
7 Funding resulted in them giving me the phone number for another department within Provident
8 Funding to discuss my options. When I called that department, they provided me with loan
9 modification forms to fill out and they told me a loan negotiator would be assigned to my
10 account. I filled the paperwork out and returned it. I then called twice a week in an attempt to
11 speak with a loan negotiator and was told that I could not speak with him/her. Out of frustration
12 with dealing with Provident Funding in June of 2009 we hired an attorney to assist us in securing
13 a loan modification with Provident Funding. Our attorney we hired was treated with the same
14 lack of communication, constant delays and acts of bad faith by Provident Funding who only
15 offered a trial modification with a higher monthly payment. In August 2009 Provident Funding
16 filed a "Notice of Default" without even responding to our pleas for a loan modification or an
17 alternative to foreclosure. Finally after the Notice of Default in November of 2009 we received a
18 "loan modification". The payment on the "modification" was a higher payment than our
19 original mortgage loan payment, did not lower the interest rate and required a substantial upfront
20 fee. In August of 2009 Provident Funding filed a Notice of Default. They would not give me a
21 loan modification and fixed rate loan with an interest rate and a lower monthly payment we
22 could afford. Instead they offered to give us a higher monthly payment and keep us in the loan
23 that created the problem to begin with.
24 I experienced many unsuccessful attempts to discuss and secure a loan modification with
25 Provident Funding. I faced a complete lack of response and communication, as did the attorney

1 we hired. Provident Funding loss mitigators denied and failed to offer us any loan modification
2 that would reduce our monthly payments.

3 9. That at no time was there any personal meetings or telephonic between me, Provident Funding
4 loan representative or anyone acting on its behalf to discuss an alternative to foreclosure before
5 filing the Notice of Default in August 2009.

6 10. I never received from Provident Funding loan representative or anyone acting on its behalf
7 the toll free number to the United States Department of Housing and Urban and Development
8 (HUD) to find a certified counseling agency before they filed the Notice of Default in August of
9 2009. I was only given their in house debt collection department before and after they filed the
10 Notice of Default.

11 11. At all times, I was available to meet with Provident Funding loan representative or anyone
12 acting on its behalf either in person or telephonically, however, nothing ever occurred.

13 12. I personally made several attempts every week for months to contact Provident Funding
14 loan representative or anyone acting on its behalf to discuss loan modification. I filled out and
15 sent in the loan modification forms I was sent after the notice of default in August 2009. I
16 received a "trial modification" with an upfront fee with a higher monthly mortgage payment than
17 I was making before.

18 13. That defendant Provident Funding, its agents, beneficiaries or anyone acting on its behalf
19 are not the holder of the promissory note in due course nor have they received an endorsement of
20 the promissory note from the true not holder(s).

21 14. That despite Provident Funding, its agents, servants, employees, beneficiaries failing to
22 comply with the requirements set forth in Civil Code Section 2923.5, a notice of default was
23 recorded against the property.

24 15. That Provident Funding and its agents, servants, employees, beneficiaries and the trustee
25 should not be allowed to benefit from its intentional and willful failure to comply with the law

1 done in response by the California Legislature to prevent such conduct as this type of
2 foreclosure.

3 16. That an Order enjoining defendants from proceeding with the selling, transferring of
4 ownership, encumbering or any other action should be granted because it is the only way
5 injustice can be avoided. There is no harm to defendants because they have failed to comply
6 with the Civil Code Section 2923.5 and they have no interest in the property and/or monetary
7 recovery, which can be justly determined by the court. Moreover, if this court determines that
8 the defendants have an interest in the subject property defendants can take action at that time.

9 17. That an Order enjoining defendants from proceeding with the foreclosure sale or any
10 other action should be granted because this land is unique. Therefore, if defendants conduct is
11 allowed there is no adequate remedy in law.

12 Furthermore, there is no harm or injury to defendants to allow the dispute to be resolved in
13 Court.

14 18. Therefore, I respectfully ask the Court to enjoin defendants from proceeding with the
15 foreclosure sale, transferring of ownership, encumbering or any other action until the matter is
16 resolved in Court.

17 I declare under the penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Dated: December 17 11, 2009.

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23 Anilech Sharma
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